IN THE IOWA DISTRICT COURT FOR POLK COUNTY

STATE OF IOWA, IOWA DEPARTMENT OF PERSONNEL,	)	
Petitioner,	)	AA 2304
vs.	)	RULING ON PETITION FOR JUDICIAL REVIEW
IOWA PUBLIC EMPLOYMENT RELATIONS BOARD,	)	
Respondent,	)	
STATE POLICE OFFICERS COUNCIL,	)	
Intervenor.	)	2/15/95

On January 6, 1995 the State of Iowa, Department of Personnel's Petition for Judicial Review came on for hearing before the Court. After hearing the arguments of counsel, reviewing the agency record and being fully advised in the premises, the Court now enters the following Ruling.

NATURE OF THE CASE

This is a section 17A.19 proceeding for judicial review of final agency action of the Public Employment Relations Board ("PERB" or "Board") concerning its October 13, 1993 decision to amend the State Police Officers Council ("SPOC") bargaining unit to include the employment classifications of Park Rangers I, II and III. Iowa Code chapter 20, the Iowa Employment Relations Act, guarantees organizational, representational and bargaining rights to public employees, but expressly excludes "supervisors" from that protected class. Iowa Code §§ 20.3(10), 20.4(2) (1993). For purposes of review, the parties do not dispute that the State of Iowa is a public employer of the rangers within

section 20.3(11) or that SPOC is an employee organization within the meaning of section 20.3(4). Further, the parties do not contest PERB's finding that Park Rangers I, II and III are otherwise appropriately included in the SPOC public safety unit based on a shared community of interest with existing unit member employees.

The divisive issue is PERB's finding that the rangers are not supervisors under section 20.4(2) and that, accordingly, the rangers are entitled to bargain collectively as provided under Iowa Code chapter 20. The State of Iowa Department of Personnel (hereafter State) contends that the rangers are supervisors and thus should be barred from union association. The State argues that PERB's contrary finding constitutes a misapplication of chapter 20 which is not supported by substantial evidence. Reversal is warranted if the district court determines that petitioner's rights have been prejudiced because the agency decision lacks substantial evidentiary support or is affected by errors of law. Iowa Code § 17A.19(8)(1993). The State urged additional bases for reversal in its petition, but its arguments to the Court have been limited to the aforementioned grounds.

REVIEW

As a preliminary matter, the section 20.4(2) exclusion is a provision taken from the National Labor Relations Act at 29 U.S.C. section 152 (11). Federal decisions will therefore be considered as relevant but not controlling authority on the issues presented for review. City of Davenport v. PERB, 264 N.W.2d 307, 313 (Iowa 1978). The reviewing court acts in an appellate capacity to correct errors of law on the part of the agency. Henry v. Iowa Dep't of Transp., 426 N.W.2d 383, 385 (Iowa 1988). The court

must look only to the final agency decision in determining whether the record supports the agency ruling when viewed in light of the standards of section 17A.19(8). Aluminum Co. of Am. v. Employment Appeal Bd., 449 N.W.2d 391, 394 (Iowa 1989).

Whether an employee is a supervisor is ordinarily a factual question that falls within the Board's special expertise of applying the statutory framework to the infinite and subtle gradations of authority which distinguish supervisors from straw bosses or other minor supervisory employees. Schnuck Markets, Inc. v. NLRB, 961 F.2d 700, 703 (8th Cir. 1992). While the Court considers the entire record, it is mindful of the deference to be accorded the Board's ruling so long as it is supported by substantial evidence. City of Davenport, 264 N.W.2d at 312; Universal Camera Corp. v. NLRB, 340 U.S. 474, 487 (1951). The Board is owed only limited deference on matters of law, including statutory interpretation. Norland v. Iowa Dep't of Job Serv., 412 N.W.2d 904, 908 (Iowa 1987).

FINDINGS OF FACT

The facts of this case are essentially undisputed. Rather, the State challenges the Board's legal conclusions drawn from these facts.

In 1976 a number of unit determination petitions seeking the establishment of bargaining units of state employees were on file with PERB. The various petitioners included the Iowa Land and Waters Conservation Officer Association, which petitioned the Board for the establishment of a bargaining unit composed solely of state employees occupying the job classifications of Park Rangers I, II and III. The petitioner Association abandoned its efforts on August 9, 1976 when it entered into an agreement with the

State whereby it was stipulated that all classes of Park Rangers were supervisory employees and therefore excluded from any bargaining unit of state employees. The Association agreed not to re-petition the Board for unit determination and certification for a period of two years from the date of the 1976 agreement.

It was also in 1976 that PERB certified SPOC as the exclusive bargaining representative for the "public safety" bargaining unit of state employees. SPOC continues to occupy this position, and on December 26, 1991 it filed a petition for amendment of bargaining unit seeking to add Park Rangers I, II and III to the public safety bargaining unit of state employees it currently represents. This petition to amend followed on the heels of a 1991 Supreme Court decision affirming the Department of Personnel's refusal to reclassify the rangers as Public Service Executives 1 (PSE1).[1] The State resisted SPOC's petition to amend, arguing that the rangers are supervisory employees.

A June 18, 1992 hearing was held before Administrative Law Judge, Jan Berry, who concluded that the rangers should be excluded from the bargaining unit because they are supervisors within the meaning of section 20.4(2). On appeal PERB reversed the ALJ's decision, finding that the rangers were not supervisors. It is not the factual findings that distinguish these decisions, but rather a differing interpretation of what

---

[1] Abel v. Iowa Dep't of Personnel, 472 N.W.2d 281, 282 (Iowa 1991)(Judicial review of agency ruling that classification as PSE1 is inappropriate because rangers' technical and program functions are predominant while their supervisory/managerial skills are secondary). The Supreme Court affirmed, finding substantial evidence to support the agency's conclusion that the managerial and supervisory functions were not sufficient to justify reclassification.

does or does not constitute a supervisor for purposes of the chapter 20 exclusion. The State petitioned for judicial review and SPOC intervened in this proceeding.

The Park Rangers are employees of the Department of Natural Resources (DNR), Division of Parks, Recreation and Preserves. The Court understands the following to be the organizational hierarchy:

Department of Natural Resources
|
Parks, Recreation & Preserves- Division Administrator
|
Parks Management Bureau- Bureau Chief
|
District Supervisors (4)
|
Park Rangers I, II and III (52)
|
DNR Aides (234) & Park Attendants (46)

The District Supervisors each superevise nine to thirteen park rangers. The Bureau Chief supervises the District Supervisors, and in turn answers to the Division Administrator.

Each ranger lives on-site and is responsible for the daily operation, maintenance and care of a particular state park. Park Rangers I are assigned to small parks and are typically the only full-time employees on-site. Park Rangers II and III are located in larger parks and often have the assistance of one or more Park Attendants and DNR Aides, depending on the time of year. The Park Attendants, like the rangers, are full-time employees assigned to a specific park. The Attendants' duties relate primarily to physical repair, maintenance or improvement of park grounds, facilities and equipment.

The DNR Aides are seasonal employees who perform duties similar to those of the Attendants. The Aides are usually employed from May until Labor Day, for a combined total of 960 hours for all Aides per season.

As PERB found, the rangers' functions fall into four general categories: (1) actual maintenance or improvement of the park; (2) education and public relations; (3) law enforcement; and (4) general administrative duties. These duties will be discussed in turn, although the present dispute primarily concerns the rangers' administrative functions which, the State claims, give rise to the supervisory exclusion.

Maintenance and Improvement Duties

Park maintenance and improvement functions are performed by rangers, DNR Aides and Park Attendants. These functions include mowing, tree trimming, cleanup of facilities and grounds, installation of additional facilities and other physical tasks associated with the care and maintenance of a park. DNR management has established detailed policies and procedures which dictate how and when these functions will be performed. For example, DNR policies dictate how park grounds will be mowed and where and how landscaping will be placed and maintained. Decisions concerning where facilities such as nature trails or playground equipment will be situated are made at levels above that of the rangers, and the rangers are without authority to independently change the location of park signs or install new signs deemed necessary without authorization from appropriate DNR management. Thus while park rangers serve as the chief caretakers, they do not possess a free hand in performing this role. Their discretion is limited.

Educational Duties

The rangers are responsible for community education and similar public relations functions. In this capacity, the rangers make conservation-related presentations to groups both within and outside the park, and they respond to public requests for information or assistance on park or conservation-related topics. The rangers are essentially liaisons between the public and the park system, and accordingly they impart information to advance the goals of the DNR concerning, among other topics, public use and enjoyment of the State's natural resources.

Law Enforcement

Rangers enforce the laws of the State, as do other peace officers, in an attempt to assure order and the safety of persons and property within the park. Functions performed by the rangers in this regard include inspecting boats for proper equipment, making arrests or issuing citations for offenses committed within the park, assisting other law enforcement officers upon request and appearing as witnesses in judicial proceedings when necessary.

Administrative Functions

The rangers' administrative functions are widely varied. The rangers must prepare statistical reports concerning the park's operation, maintain a user fee collection system and account for such receipts, and maintain an inventory of the park's State-owned property and supplies and account for such property.

The rangers play only a limited role in the formulation of the Parks, Recreation & Preserves Division budget. The rangers played a more active role in budget

formulation prior to creation of the DNR in 1986. Since then funding for the rangers' discretionary spending has diminished and the budget process was reorganized in a way that eliminated the rangers' annual preparation of formal budget requests. Budgeting has subsequently taken place at the division level by higher authority, and allocations are made not directly to the parks, but instead to the Parks Management Bureau's four districts. A district supervisor informs each ranger of the funds the supervisor has allocated to the ranger for limited discretionary spending. Park Rangers do make recommendations or requests for budget adjustment, but their formal role in the budget process has been eliminated and there is no evidence that their budget requests or recommendations are routinely granted by higher authority without independent review or consideration.

The rangers are responsible for maintaining adequate amounts of supplies. They possess limited spending authority over the funds allocated to them by their district supervisors for this function. Rangers are permitted to independently make expenditures which do not exceed $500.00, however any expenditures exceeding that amount must be approved by the district supervisor, bureau chief and/or division administrator. Rangers also perform administrative duties associated with the employment activities of Park Attendants and DNR Aides. For instance, rangers must ensure that Aides and Attendants satisfy required training in CPR and first aid. Rangers sign-off on the time sheets and travel vouchers for the Aides and Attendants, they evaluate the performance of these employees, and they make preliminary recommendations regarding requests for educational assistance or educational leave. The record does not indicate what weight, if any, the rangers' evaluations or

recommendations command in subsequent review by higher authority.

The park ranger is responsible for seeing that the park grounds are properly cared for and that tasks ordered by management are performed as directed. Due to the rangers' additional duties, these physical tasks are often delegated to Park Attendants and DNR Aides. Aware of the work which must be performed, the rangers prioritize the tasks to be performed personally or delegated to the Attendants and Aides. To some extent the rangers set work schedules and direct the work of the Aides and Attendants, yet the rangers are constrained by DNR directives concerning the specifics of work activities and the hours to be assigned to workers.

Rangers sit as members of panels which interview Park Attendant applicants. However, the actual selection and assignment of the Attendants is made by the division administrator. The rangers' role in the hiring of DNR Aides is more extensive. A ranger is informed by his or her supervisor of the number of Aides allocated to the ranger's park, the number of hours each is authorized to work and the wage which will be paid to the Aides. The rangers possess considerable discretion in the hiring of Aides who are exempt from the Department of Personnel's hiring policies. Accordingly, the Aides have no rights of appeal, transfer, promotion, demotion, reinstatement, or other rights of position, nor are they entitled to vacation, sick leave, or other benefits.[2]

The rangers are without authority to independently discharge or discipline Park Attendants, yet that authority exists to a greater degree in the case of DNR Aides. The Aides are seasonal employees, and management determines how long these

---

[2] Iowa Administrative Code section 581-8.11(19A).

employees will work and the time at which certain numbers must be released from employment. The rangers then have discretion in determining which of these Aides will be discharged. The record suggests that the rangers may have authority to discipline Aides, but the rangers are still expected to consult with their superiors prior to imposing any discipline. A ranger may make recommendations regarding discipline or discharge of Attendants, but the record discloses that the ultimate decision rests with higher authority. Such instances of discipline are rare, and it appears that the rangers' authority in this respect is limited.

Similarly, grievance filings by these classes of employees are uncommon within the Parks, Recreation & Preserves Division. While the rangers initially receive such grievances, there is no evidence that rangers are authorized to actually settle grievances by taking remedial action. The rangers may make recommendations, but again, it appears that remedial decisions come from higher authority Neither the Aides nor the Attendants are members of SPOC, the bargaining unit which seeks to represent the rangers. .

Based on the foregoing facts, NLRB precedent and legislative intent underlying the supervisory exclusion, PERB concluded that park rangers are not supervisors within the meaning of Iowa Code section 20.4(2).

CONCLUSIONS OF LAW

Chapter 20, the Iowa Employment Relations Act, guarantees organizational, representational and bargaining rights to public employees but expressly excludes supervisors from that protected class. Iowa Code §§ 20.3(10); 20.4(2)(1993). This Act

is written in broad terms so as to permit a large number of public employees to be eligible for coverage under its provisions. Iowa Ass'n of School Boards v. PERB, 400 N.W.2d 571, 576 (Iowa 1987). Accordingly, the section 20.4(2) exclusion must be read narrowly to promote the Act's broad application. Id.

The language of this exclusion was drawn nearly verbatim from the National Labor Relations act at 29 U.S.C. section 152 (11). A supervisory employee refers to:

> any individual having authority in the interest of the public employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other public employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Iowa Code §20.4(2). The impetus for the section 152(11) exclusion arose from a concern that unionization of supervisory employees would tend to break down industrial discipline by blurring the distinction between management and labor. City of Davenport, 264 N.W.2d at 313. In an effort to remedy this potential imbalance in labor relations, it was deemed necessary to deny supervisory personnel the right of collective bargaining in order to preserve their unqualified loyalty to the interests of their employers, and to prevent the dilution of this loyalty by giving them common interests with the subordinates they were hired to supervise and direct. Id.

However, in carving out this exclusion, the Senate committee explained:

> [T]he committee has not been unmindful of the fact that certain employees with minor supervisory duties have problems which may justify their inclusion [within the protections of the ACT]. It has therefore distinguished between straw bosses, leadmen, set-up men, and other minor supervisory employees, on the one hand, and the supervisor vested with such genuine management prerogatives as the right to hire or fire, discipline, or make effective recommendations with respect

to such action.

S.Rep.No.105, 80th Cong., 1st Sess., p.4 (1947). Congress sought to exclude from employee status "only those employees who were the arms and legs of management in executing labor policies." City of Davenport, 264 N.W.2d at 313 (citation omitted).

The "supervisory" exclusion has two components. First, the individual must have the authority to accomplish one of the enumerated functions of section 20.4(2). This requirement is read in the disjunctive. City of Davenport, 264 N.W.2d at 314. Therefore, possession of any one of the statutory functions justifies a finding of supervisory status. Id. Second, the exercise of the individual's authority must require the use of independent judgment and be of more than a routine or clerical nature. It must be authority exercised in the interest of the employer. Id. These latter requirements are conjunctive.

With respect to the first part of this analysis, the evidence reveals that the rangers possess authority to hire public employees (DNR Aides) and to direct the work of both the Aides and the Park Attendants within the parameters set by DNR management. The Court agrees with the ALJ's rejection of the State's arguments concerning supervisory status based upon the rangers' purported authority to hire, suspend, discipline or discharge the Park Attendants, as well as those arguments based upon the rangers' performance evaluation function and their alleged authority to effectively adjust grievances of, or to effectively recommend the reward of either the Attendants or Aides. The absence of tangible examples of such functions in the record compels the Court to conclude that supervisory status does not exist under these theories. Thus, if rangers are deemed supervisors, it must be based on their authority

to hire Aides and/or their authority to direct the work of Aides and Attendants.

It is the second part of the "supervisory" analysis which is decisive and which was a point of disagreement between the ALJ and PERB. The factors of this analysis are meant to identify an employee whose responsibility is substantial and pervasive enough to make the employee a part of management. City of Davenport, 264 N.W.2d at 322. This employee must be distinguished from the employee who exercises judgment which is incidental to the application of his or her technical or professional skill. The former is a supervisor; the latter is not. Id. at 313; See generally NLRB v. Bell Aerospace Co., 416 U.S. 267, 281 (1974); NLRB v. Adco Elec. Inc., 6 F.3d 1110, 1117 (5th Cir. 1993); NLRB v. Harmon Industries, Inc., 565 F.2d 1047 (8th Cir. 1977).

The statutory exclusion requires evidence of actual supervisory authority translated into tangible examples. City of Davenport, 264 N.W.2d at 313. Some kinship to management, "some empathic relationship between employer and employee," must exist before the latter becomes a supervisor for the former. NLRB v. Security Guard Service, Inc., 384 F.2d 143, 149 (5th Cir. 1967). For supervisory status to exist, the responsibilities of the position must substantially identify the employee with management. City of Davenport, 264 N.W.2d at 314. The transition from employee to supervisor becomes complete when one is found to possess real power in the interest of the employer to take meaningful action with respect to the statutory functions. International Union of United Brewery v. NLRB, 298 F.2d 297, 303 (D.C. Cir.), cert. denied, sub nom. Gulf Bottlers, Inc. v. NLRB, 369 U.S. 843 (1961).

It is not enough that he or she may hire or fire or lay off or discipline. Id. Such functions must be performed in the interest of the employer and with independent

judgment. Id.; City of Davenport, 264 N.W.2d at 314. Individuals who merely serve as conduits for orders emanating from superiors act routinely and lack supervisory status. City of Davenport, 264 N.W.2d at 314. Moreover, the directing of work by a skilled or experienced employee to employees with less skill or experience does not involve the use of independent judgment when it is incidental to the application of the experienced employee's technical or professional know-how. Id.

Whether the rangers are supervisors is a determination not susceptible to any easy bright line test. It is the legislative purpose behind the supervisory exclusion from which the foregoing standards were derived. The Court must ascertain whether a potential conflict between management and the rangers would exist if the rangers are permitted to unionize. In other words, do the rangers possess supervisory authority from which the DNR may accordingly expect or demand their unqualified loyalty. If so, would this loyalty be compromised by giving the rangers bargaining rights and interests in common with union members? While the principles enunciated above are helpful in resolving the issue of supervisory status, the following passage provides a good summary of the relevant factors to be considered:

> We [NLRB] reject any shorthand approach. Rather, to ascertain whether an individual's exercise of supervisory authority over employees outside the unit warrants his exclusion as a supervisor, we must take a complete examination of all the factors present to determine the nature of the individual's alliance with management. Relevant factors to be considered will include, but not be limited to, the business of the employer, the duties of the individuals exercising supervisory authority and those of the bargaining unit employees, the particular supervisory functions being exercised, the degree of control being exercised over the nonunit employees, and the relative amount of interest the individuals at issue have in furthering the policies of the employer as opposed to those of the bargaining unit in which they would be included. We will continue to view time spent in performance of supervisory duties relevant, but not controlling, to our analysis. Further our consideration of this

> factor will no longer rely on a rule that draws the line for finding supervisory status at individuals whose supervisory duties require 50 percent or more of their time.

Detroit College of Business, 132 L.R.R.M. 1081, 1083 (1989).

After considering these factors and the entire record, the Court finds that the evidence supporting PERB's decision is substantial. The Court agrees that the evidence of the rangers' activities in assigning and directing workers' activities is more indicative of "leadman " status than true supervisory status. These activities do not reflect the exercise of independent judgment since so much of the work is routine, dictated by established policy and/or subject to continuing review by higher authority. The rangers function as "leadmen" or "straw bosses" when exercising common sense or greater skill in directing less skilled employees in performing routine tasks. Assigning employees to work on a routine basis is insufficient to create supervisory status because it does not require independent judgment within the meaning of the statutory definition. City of Davenport, 264 N.W.2d at 321. Further, the rangers' supervisory authority concerns subordinate non-unit employees which diminishes the potential for conflict between management and labor interests.

While the Abel decision is not conclusive on the issue presented, it is relevant to the State's perception of rangers. In that case, the Supreme Court affirmed the State's position that the rangers' technical functions were predominant and their supervisory/ managerial skills were secondary in importance, thus making the rangers' request for reclassification to Public Service Executives 1 unwarranted. Abel v. Iowa Department of Personnel, 472 N.W.2d 281, 282 (Iowa 1991). Iowa Administrative Code

section 581-4.5(5) provides:

> Whenever a nonsupervisory employee is assigned duties such as distribution of work assignments, reviewing the work of others in the work unit, or maintenance of attendance or production records, and the performance of those duties does not justify reclassification, the director may approve the employee as a leadworker...

This rule of the Department of Personnel implicitly recognizes that nonsupervisory employees may be responsible for such duties as managing and overseeing the work of others. This does not necessarily make one a supervisor, and where reclassification is not justified it may be found that the performance of these duties makes one a "leadworker". This seems quite analogous to the leadman or straw boss concepts discussed above.

While the fact that an employee has authority to hire and fire may be a compelling basis for finding supervisory status, it does not dictate such a result in this case. It is true that the rangers have authority to hire DNR Aides. However, the number that may be hired and the duration of their seasonal employment are decisions made by the rangers' superiors. The rangers are responsible for hiring these seasonal employees who are exempt from the Department of Personnel's hiring standards. DNR management does not care about the qualifications or backgrounds of DNR Aides applicants. (Resp. Exh. p.160). Accordingly, the Court does not find that this hiring authority compels the result argued by the State. While it is true that possession of any one of the enumerated functions justifies a supervisory status, this finding must be accompanied by a showing that this function involves the use of independent judgment in the interest of the employer.

The rangers do not make these hiring decisions in the interest of the DNR. The Aides are short-term employees without significant employment rights or benefits. They are merely semi or non-skilled employees who perform physical work at state parks during periods of peak usage. DNR management exhibits little or no concern for these hiring decisions, perhaps because they are temporary relationships running almost exclusively between the Aides and the rangers who hired them. By contrast, the Park Attendants are permanent full-time state employees who generally make up the recruiting class for ranger positions. The DNR necessarily has a greater interest in these employees, and accordingly, management controls the hiring of Park Attendants.

In an area of law where each case is and must be factually unique, the Court as the third evaluator of this case can find no fault with the agency's final decision. The agency properly considered the legislative purpose for the supervisory exclusion. Its conclusion, that a conflict between labor and management would not be created by permitting amendment of the bargaining unit to include rangers, is supported by substantial evidence. The threat of diminished loyalty to management by union association is simply not present in this case. Further, there is substantial evidence in the record for the agency's finding that the rangers lack authority to independently act or make decisions in the interest of the DNR.

RULING

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the ruling of the Public Employment Relations Board is Affirmed

Dated this 15th day of February, 1995

JUDGE ROBERT A HUTCHISON
FIFTH JUDICIAL DISTRICT OF IOWA

Copies to

Linny Emrich
Assistant Attorney General
Hoover Building, 2nd Floor
Des Moines, Iowa 50319

James H Murphy
Public Employment Relations Board
514 E Locust Street, Suite 202
Des Moines, Iowa 50309

Pamela Prager
Charles Gribble
Suite 1200, 317 6th Avenue
Des Moines, Iowa 50309